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3 **DECISION AND ORDER**
4 **OF THE**
5 **BOARD OF PSYCHOLOGY**

6
7 **DEPARTMENT OF CONSUMER AFFAIRS**

8
9 The attached Default Decision in case number W289, is hereby adopted as the Decision
10 and Order of the Board of Psychology, Department of Consumer Affairs. An effective date of
11 December 7, 2005 has been assigned to this Decision and Order.

12
13 Made this 7th day of November, 2005.

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15 
16 _____
17 Jacqueline B. Horn, Ph.D.
18 President, Board of Psychology
19 Department of Consumer Affairs
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3 **BEFORE THE**
4 **BOARD OF PSYCHOLOGY**
5 **DEPARTMENT OF CONSUMER AFFAIRS**
6 **STATE OF CALIFORNIA**

7 In the Matter of the Accusation Against:

Case No. W289

8 **ANDREW B. McGARITY, Ph.D.**

DEFAULT DECISION AND ORDER

9 License No. PSY 7509

10 Respondent.

11 On or about May 11, 2005, an employee of the Board of Psychology (hereinafter
12 "Board") sent by certified mail a copy of Accusation No. W289, Statement to Respondent,
13 Notice of Defense in blank, copies of the relevant sections of the California Administrative
14 Procedure Act as required by sections 11503 and 11505 of the Government Code, and a request
15 for discovery, to Andrew B. McGarity, Ph.D. (hereinafter "respondent") at his address of record
16 with the Board, 1269 Hopewell Church Road, Blackstock, SC 29014. The green certified mail
17 receipt was signed and returned. (Copies of the Accusation package, along with the proof of
18 service and certified mail receipt are attached hereto as Exhibit 1.) Respondent submitted a
19 Notice of Defense. (A copy of the Notice of Defense is attached hereto as Exhibit 2.)

20 On or about July 7, 2005, a Notice of Hearing was served by certified mail and by
21 regular mail on respondent at his address of record. The certified mail envelope was returned
22 marked "out of town." On August 8, 2005, the Notice of Hearing was reserved, and the green
23 certified mail receipt was thereafter signed by respondent and returned. The Notice of Hearing
24 informed respondent that an administrative hearing in this matter was scheduled for October 6,
25 2005. (A copy of the Notice of Hearing, the proofs of service and the return receipt is attached
26 hereto as Exhibit 3.)

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Respondent did not appear at the October 6, 2005 hearing. The Administrative Law Judge found that proper notice of the hearing had been provided, and declared respondent to be in default.

The Board of Psychology now proceeds to take action based upon the Accusation, declarations and documentary evidence on file in accordance with Government Code sections 11505(a) and 11520.

FINDINGS OF FACT

I.

Thomas S. O'Connor was the Executive Officer of the Board of Psychology at the time the Accusation was filed. Jeffrey Thomas is currently the Interim Executive Officer of the Board. The charges and allegations in the accusation were brought and maintained solely in their official capacities.

II.

On or about August 2, 1982, License No. PSY 7509 was issued by the Board to Andrew B. McGarity, Ph.D. Said certificate is currently on inactive status, and will expire, unless renewed, on July 31, 2006. (A copy of the license certification is attached hereto as Exhibit 4.)

III.

On May 11, 2005, an Accusation was filed by the Board alleging causes for discipline against respondent. The accusation and accompanying documents were duly served on respondent. Respondent filed a Notice of Defense. Respondent thereafter failed to appear at a duly noticed hearing, and respondent was declared to be in default.

IV.

The allegations of the accusation are true as follows:

On or about October 21, 2003, the South Carolina State Board of Psychology Examiners issued its Final Order regarding respondent's license to practice psychology in South Carolina. The South Carolina Board found that respondent failed to meet the standard of care in conducting a child custody evaluation. Specifically, it was determined that respondent failed to

1 follow American Psychological Association guidelines when he conducted a custody evaluation
2 incident to a divorce proceeding, and the data respondent gathered during the course of the
3 evaluation was severely lacking in information. Respondent's South Carolina license was
4 reprimanded, and he was placed on probation for six months. During the period of probation,
5 respondent's practice was required to be under supervision. After the Final Order was issued,
6 respondent sought reconsideration. The South Carolina Board ultimately denied the request for
7 reconsideration, and the Final Order went into effect on or about April 5, 2004. (A copy of the
8 Final Order issued by the South Carolina State Board of Psychology Examiners is attached to the
9 Accusation, Exhibit 1 hereto.)

10 Pursuant to the foregoing Findings of Fact, respondent's conduct constitutes
11 unprofessional conduct within the meaning of Business and Professions Code section 2960(m)
12 and is conduct subject to discipline within the meaning of section 141(a).

13 V.

14 The Board finds that pursuant to Business and Professions Code section 125.3 ,
15 the costs of investigation and enforcement of the case prayed for in the Accusation total \$683.00,
16 based on the Certification of Costs, attached hereto as Exhibit 5.

17 **DETERMINATION OF ISSUES**

18 I.

19 Pursuant to the foregoing Findings of Fact, respondent's conduct constitutes
20 unprofessional conduct within the meaning of Business and Professions Code section 2960(m)
21 and is conduct subject to discipline within the meaning of section 141(a).

22 Pursuant to the foregoing Findings of Fact, the costs of investigation and
23 enforcement of this action total \$683.00. Said costs are reasonable.

24 **DISCIPLINARY ORDER**

25 Psychologist's License No. PSY 7509 Andrew B. McGarity, Ph.D.. is hereby
26 **REVOKED.** Respondent is ordered to pay \$683.00 in costs, payable to the Board of
27 Psychology.

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Respondent shall not be deprived of making a request for relief from default as set forth in Government Code section 11520(c) for good cause shown. However, such showing must be made in writing by way of a motion to vacate the default decision and directed to the Board of Psychology, 1422 Howe Avenue, Suite 22, Sacramento, CA 95825 within seven (7) days of the service of this Decision.

Exhibit 1

BILL LOCKYER, Attorney General
of the State of California
JANE ZACK SIMON
Deputy Attorney General [SBN 116564]
California Department of Justice
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, California 94102
Telephone: (415) 703-5544
Facsimile: (415) 703-5480

Attorneys for Complainant



BEFORE THE
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANDREW B. McGARITY, Ph.D.
1269 Hoyewell Church Road
Blackstock, SC 29014

License No. PSY 7509

Respondent.

Case No. W289

ACCUSATION

THOMAS S. O'CONNOR, complainant herein, charges and alleges as follows:

1. He is the Executive Officer of the Board of Psychology, State of California (hereinafter referred to as the "Board"), and makes these charges and allegations solely in his official capacity.

2. On or about, August 2, 1982, respondent Andrew B. McGarity, Ph.D. (hereinafter referred to as "respondent"), was issued License No. PSY 7509 by the Board of Psychology, authorizing him to practice psychology in the State of California. The license is currently on inactive status, and will expire, unless renewed, on July 31, 2006. The Board has taken no prior disciplinary action against this license.

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JURISDICTION

4. This accusation is brought before the Board of Psychology under the authority of the following sections of the California Business and Professions Code (hereinafter "Code") and/or other relevant statutory enactment:

A. Section 2960 of the Code states, in pertinent part, that the Board may suspend, revoke or impose probationary conditions on a licensee for unprofessional conduct, which is defined to include, but not be limited to, any of the following causes:

(m) The suspension, revocation or imposition of probationary conditions by another state or country of a license or certificate to practice psychology or as a psychological assistant issued by that state or country to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section.

B. Section 141 of the Code provides:

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

C. Section 125.3 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before any board within the Department of Consumer Affairs, the board may request the administrative law judge to direct a licensee found to have committed any violation of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

D. Section 2964.6 of the Code provides that, "[a]n administrative disciplinary decision that imposes terms of probation may include, among other things, a requirement that the licensee who is being placed on probation pay the monetary costs associated

1 with monitoring the probation."

2 5. Respondent is subject to discipline within the meaning of section 141 and
3 is guilty of unprofessional conduct within the meaning of section 2960(m) as more particularly
4 set forth herein below.

5 **FIRST CAUSE FOR DISCIPLINE**

6 (Discipline Imposed by Another State)

7 6. On or about October 21, 2003, the South Carolina State Board of
8 Psychology Examiners issued its Final Order regarding respondent's license to practice
9 psychology in South Carolina. The South Carolina Board found that respondent failed to meet
10 the standard of care in conducting a child custody evaluation. Specifically, it was determined
11 that respondent failed to follow American Psychological Association guidelines when he
12 conducted the custody evaluation incident to a divorce proceeding, and the data respondent
13 gathered during the course of the evaluation was severely lacking in information. Respondent's
14 South Carolina license was reprimanded, and he was placed on probation for six months. During
15 the period of probation, respondent's practice was required to be under supervision. After the
16 Final Order was issued, respondent sought reconsideration. The South Carolina Board ultimately
17 denied the request for reconsideration, and the Final Order went into effect on or about April 5,
18 2004.

19 Attached as Exhibit A is a true and correct copy of the Final Order issued
20 by the South Carolina State Board of Psychology Examiners

21 7. The discipline imposed by the South Carolina State Board of Psychology
22 Examiners constitutes a violation of section 141 and unprofessional conduct within the meaning
23 of Code section 2960(m).

24 **PRAYER**

25 **WHEREFORE**, the complainant requests that the Psychology Board hold a
26 hearing on the matters alleged herein and that following said hearing, issue an order:

27 1. Suspending or revoking Psychology License No. PSY 7509 heretofore
28 issued to Andrew B. McGarity, Ph.D.;

2. Ordering respondent to pay the Board the actual and reasonable costs of the investigation and enforcement of this case; and, if respondent is placed on probation, the costs of probation monitoring; and,

3. Taking such other and further action as the Board deems necessary and proper.

DATED: May 11, 2005.

Thomas O'Connell

THOMAS S. O'CONNOR
Executive Officer
Board of Psychology

Complainant

Exhibit A



RECEIVED
BOARD OF PSYCHOLOGY

2005 MAR -4 AM 11:50



South Carolina Department of Labor, Licensing and Regulation

Mark Sanford
Governor

Adrienne Riggins Youmans
Director

South Carolina Board of Examiners in Psychology

110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4664
FAX: (803) 896-4687
www.llr.state.sc.us

March 1, 2005

Marsha J. Guzzi
Enforcement Analyst
California Board of Psychology
1422 Howe Ave., Suite 22
Sacramento, CA 95825-3200

Dear Ms. Guzzi:

Your request for certified copies of any disciplinary action taken against Andrew B. McGarity, Ph. D. including the "Statement of Charges", and "Final Decision" was received in the office of the South Carolina Board of Examiners in Psychology on February 15, 2005. Enclosed are certified copies of those documents.

Also per your request for positive identification, our records indicate Dr. McGarity's date of birth is July 11, 1939, social security number is [REDACTED] and last know address is 1269 Hopewell Church Road., Blackstock, South Carolina, 29014. To our knowledge there are no criminal actions against Dr. McGarity.

If I can be of additional assistance, please feel free to contact me at the above telephone number/address.

Sincerely,

Patricia F. Glenn
Administrator

BEFORE THE SOUTH CAROLINA STATE BOARD OF PSYCHOLOGY EXAMINERS

In the Matter of:

ANDREW B. McGARITY, Ph.D.

License #695,

Respondent.

FINAL ORDER

This matter came before the Board of Psychology Examiners (the Board) for hearing on September 19, 2003, as a result of the Notice and Formal Accusation which was served upon the Respondent and filed with the Board. The hearing was held pursuant to S.C. Code Ann. §40-55-130 (1976), as amended, to hear the charges alleged in the Formal Accusation and determine if the Respondent's license to practice psychology should be revoked, suspended, or otherwise modified as provided by law. Patrick D. Hanks, Esquire, represented the State. F. Glenn Smith, Esquire, represented the Respondent.

The Respondent was charged with violation of S.C. Code Ann. §40-55-150(A)(8) (Supp. 1998 and 1999) and S.C. Code of Regulation. No. 100-4(C)(4) and (6) (Supp. 1998 and 1999).

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Board finds the facts of the case to be as follows:

1. The Respondent is a clinical psychologist duly licensed to practice in the State of South Carolina, and was so licensed at all times relevant to the allegations in the Formal Accusation.

2. The State filed a Formal Accusation accusing the Respondent of failing to follow American Psychological Association (APA) guidelines when he conducted a custody evaluation incident to a divorce proceeding. Although the Respondent acknowledged in his response to the initial accusations that the custody evaluation in question was conducted "with the experience obtained through the American Psychological Association principles", he also asserted that the Board could not charge him with failing to follow guidelines that have not been formally adopted by the Board. An expert in the area of custody evaluations testified for the State. According to the expert's testimony, it is generally accepted within the profession that APA guidelines are employed when conducting custody evaluations. The Board agrees with the State's expert that, as there are no other guidelines for conducting evaluations, it is generally accepted that the APA guidelines are controlling. A copy of the Respondent's response, dated February 7, 2001, was placed in evidence and provided to the Board.

3. The State's expert additionally testified that the data gathered by the Respondent in conducting the custody evaluation was severely lacking in information necessary to conduct a competent evaluation. He testified about numerous specific deficiencies in the evaluation, the most egregious being the Respondent's failure to have any contact with the children. The Respondent gave two explanations in his testimony for not making contact with the children. One being the children's young age, at the time of the evaluation the children were ages two and three years, and the other being that he was not paid to evaluate the children. He also testified that he did not feel qualified to conduct an evaluation with children that young in age. However, the expert testified that the young ages of the children was more of a compelling reason for the Respondent to have contact with them, if not for an evaluation, to observe the interaction between each parent and the children before making a definitive recommendation on which parent should be awarded custody. The Board agrees with the expert's testimony as it relates to the deficiencies in the custody evaluation conducted by the Respondent.

4. The Board notes the Respondent's objection to the expert's use of the deposition of one of the parents involved in the custody case in formulating his opinion because the deposition was taken after the Respondent completed the evaluation. However, the expert testified that had he not been provided with the deposition, he still would have reached the same conclusion in the case since the deposition, for the most part, only highlighted the deficiencies in the data collected by the Respondent. He also testified that there was nothing in the Respondent's office records or the evaluation that indicated the Respondent even inquired about much of the relevant information that was in the deposition. It was the expert's opinion that the custody evaluation performed by the Respondent failed to meet the generally accepted standard of care normally expected of clinical psychologists practicing in the State of South Carolina. The Board agrees with the expert's opinion in this case.

CONCLUSIONS OF LAW

Following careful consideration of the facts in this matter, the Board finds and concludes as a matter of law that:

1. The Board has jurisdiction in this matter and, upon finding that a licensee has violated any of provisions of S.C. Code Ann. §40-55-130, supra, has the authority to order the revocation, suspension or otherwise restrict the license or permit of the psychologist, publicly or privately reprimand the holder of a license or permit, or take other reasonable action short of revocation or suspension, such as requiring the licensee to undertake additional professional training subject to the direction and supervision of the Board or imposing restraint upon the professional practice of the licensee as circumstances warrant until the licensee demonstrates to the Board adequate professional competence. Additionally, the Board may impose a fine not to exceed five hundred dollars, and the reasonable costs of the investigation and prosecution of the disciplinary action.

2. The Respondent has violated S.C. Code Ann. §40-55-150(A)(8) (1976), as amended, in that the Respondent has violated the following Code of Ethics adopted by the Board:

(A) Regulation No. 100-4(C)(6) in that the Respondent conducted a child custody evaluation and rendered a formal professional opinion in the case without gathering sufficient information upon which to base his opinion.

3. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continuing services of qualified psychologists against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The sanction imposed is designed not to punish the Respondent, but to protect the life, health, and welfare of the people at large.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. The Respondent shall be, and hereby is, publicly reprimanded.

2. The Respondent's license shall be placed in a probationary status for a period of six (6) months, and during the probationary period the Respondent's practice shall be under the supervision of a licensed clinical psychologist who shall be selected by the Board. During the supervisory period, the Respondent shall meet with the supervising psychologist on a bi-monthly basis for a review of his practice. At the conclusion of the probationary period, but prior to termination of the probation, the Respondent and the supervising psychologist shall be required to make an appearance before the Board. All costs associated with the supervision of Respondent's practice shall be borne solely by the Respondent, and shall be paid within thirty (30) days of Respondent's receipt of an invoice.

3. The Respondent shall promptly advise the Board in writing of any changes in address, employment, practice, professional status, or compliance with this final order. Correspondence and notices mentioned hereby shall be directed to:

South Carolina Department of Labor, Licensing
and Regulation
State Board of Examiners in Psychology
Post Office Box 11329
Columbia, South Carolina 29211

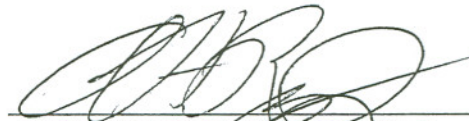
4. The Respondent shall cooperate with the Board, its attorneys, investigators, and other representatives in the investigation of the Respondent's practice and compliance with the provisions of this final order. It is the Respondent's responsibility to demonstrate compliance with each and every provision of this final order. Failure by the Respondent to abide by any of the aforementioned conditions of his probation, or if the Respondent is otherwise unable to practice with reasonable skill and safety to patients, may warrant the immediate temporary suspension of his license to practice in this State pending hearing into the matter and until further order of the Board.

5. This final order shall take effect upon the service of the order on the Respondent or Respondent's counsel.

AND IT IS SO ORDERED.

STATE BOARD OF PSYCHOLOGY EXAMINERS

BY:



ANDREW H. RYAN, JR., Ph.D.

Chairman of the Board

October 21, 2003

BEFORE THE SOUTH CAROLINA STATE BOARD OF PSYCHOLOGY EXAMINERS

In the Matter of:

ANDREW B. McGARITY, Ph.D.

License # 695

Respondent.

FORMAL ACCUSATION

I.

1. Respondent is currently licensed by the South Carolina State Board of Psychology Examiners ("Board"), License No. 695, originally issued on March 20, 1998, and renewed annually thereafter.

2. The Board has jurisdiction over this matter.

II.

Upon information and belief, Respondent engaged in misconduct in violation of S.C. Code of Laws Ann. § 40-55-150(A)(8)(Supp. 1998 & 1999) and South Carolina Regulations No. 100-4(C)(4) and (6)(Supp. 1998 & 1999) as set forth herein below:

1. During the approximate period of August 1999, Respondent failed to obtain sufficient information before rendering a professional opinion. Respondent conducted a mental status evaluation of M.G.C. (a client whose name is known to the Respondent) Respondent rendered an opinion or assessment of the client without reviewing hospital records, testing, or consultation with the client's mental health practitioner. Respondent assessed the client after reviewing an intake form, observations, an interview, and two records from the client's mental health practitioner.

2. Respondent conducted a court ordered custody evaluation of R.S. and J.S. (Whose names are known to the Respondent) incident to a divorce proceeding. Respondent failed to follow American Psychological Association guidelines for conducting child custody evaluations. Respondent did not adequately relate psychological functioning of the parents to their parenting capacities, did not assess the quality of the children's attachment with each parent nor did Respondent comment on the interaction of the children with their parents. Finally, Respondent did not access the parenting capacity of the paternal grandparents who were secondary care givers.

III.

PURSUANT to S.C. Code Ann. §§ 40-55-130 through 40-55-160 (Supp. 1998 & 1999), the Board has the authority to revoke or suspend your license to practice psychology, or to take actions short of a total revocation such as entering into a consent agreement with the licensee requiring additional training, supervision, or restrictions subject to the Board's satisfaction that the licensee has

demonstrated adequate professional competence. **TAKE NOTICE THAT**

- a. You are entitled to an opportunity to be heard with respect to the charges.
- b. Hearings are held in accordance with the South Carolina Administrative Procedure Act, as set forth in S.C. Code Ann. §§1-23-310 through 1-23-400. Your procedural rights are contained therein. You have such rights as: (1) to present evidence; (2) to present argument on all issues; (3) to retain counsel; (4) and to cross examine witnesses presented in the case of a hearing. Additional rights are set out within the said section of the S.C. Code.

STATE BOARD OF PSYCHOLOGY EXAMINERS

BY: Ph.D. David E. Barrett, Ph.D.

DAVID E. BARRETT, Ph.D.

Chairman of the Board

April 20, 2001.

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE SOUTH CAROLINA BOARD OF EXAMINERS IN PSYCHOLOGY**

In the Matter of:

Andrew B. McGarity, Ph.D.

Licensed Psychologist #000695,

Respondent.

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**MOTION AND PETITION
TO RECONSIDER FINAL ORDER**

The Respondent seeks an Order altering and amending the Final Order in this cause dated October 21, 2003, in the following particulars:

1. Determining that the first accusation is dismissed with prejudice.
2. The issuance of an unpublished Final Order written; or,
3. The withdrawal of the Final Order and the issuance of a letter of caution or letter of warning, at most, in its stead; or,
4. A suspension of the Final Order, unpublished, conditioned upon Dr. Andrew B. McGarity's not conducting any other custody evaluations.

II. GROUNDS

The first charge made against Dr. McGarity was not pursued and the record is clear that the State was not going to prosecute the case yet the Board failed to make such a determination.

The decision of the Board is inconsistent with the history of its disciplinary actions. In its own reports for 1997-1998, there was a letter of caution and a letter of warning issued relating to custody evaluations. In 1998-1999, there were two letters of caution involving custody matters. One involved a psychologist who accompanied his client to North Carolina to testify in a custody case and spent the night with her which was not made public!

In the report for 2000-2001, a letter of warning was issued relating to a custody evaluation.

Not one public reprimand has been issued in six years involving custody evaluations. The actions of the psychologist who were issued the letters of caution or letters of warning were much more egregious than that of which Dr. Andrew B. McGarity has been accused.

There has been no explanation by the Board to justify its radical deviation from its historical practice with regard to the discipline in the matters of custody evaluations. To single Dr. McGarity for special treatment, which is inconsistent with the Board's history, is inexplicable.

Further, the Final Order relates to his entire practice when the only error, if any, involves a child custody evaluation. Dr. McGarity asserted under oath that he would never again undertake a child custody evaluation. The ruling of the Board should be applicable only to any future child custody evaluation that he may do.



F. GLENN SMITH
ATTORNEY FOR

Andrew B. McGarity, Ph.D.

1510 Calhoun Street, Second Floor

Columbia, South Carolina 29201

Telephone No.: (803) 771-6107

Facsimile No.: (803) 799-8249

November 21st, 2003

Columbia, South Carolina

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE SOUTH CAROLINA STATE BOARD OF
PSYCHOLOGY EXAMINERS**

In the Matter of:

ANDREW B. McGARITY, Ph.D.,

License No. 695,

Respondent.

**RETURN TO MOTION AND PETITION
TO RECONSIDER FINAL ORDER**

The Petitioner herein, State of South Carolina Department of Labor, Licensing and Regulation, State Board of Psychology Examiners (the Board), making return to Respondent's Motion and Petition to Reconsider Final Order, dated November 21, 2003, would respectfully show that:

1. The Board properly accepted the standard as established by expert testimony. There was ample evidence which established the standard for child custody evaluations and testimony which established a deviation therefrom. There is no requirement for the APA Standards to be adopted by the Board. The standard of care is derived from a numbers of sources, not merely a statute or regulation.
2. Respondent appears to require a finding on every specific allegation contained in the Formal Accusation. Respondent specifically requests that the Board (1) decide whether he adequately related the psychological functioning to the parenting capacity; (2) whether he failed to access the quality of the child's attachment with each parent and; (3) whether Respondent failed to comment on the interaction between the parent and the child. These are the specific areas commented on by Dr. Van Wyke. In determining that the Respondent did not meet the appropriate standard, Dr. Van Wyke listed these areas as to how Respondent failed to meet the standard. In paragraph three within the Boards Findings of Fact the Board accepts the expert testimony as it relates to deficiencies in the custody evaluations conducted by the Respondent; therefore, the Board did implicitly make such findings.
3. Respondent further asserts that the sanction was punitive. The Board, once misconduct was determined, was entitled to hand down any sanction authorized by law. On page three of the Final Order, there are two specific reasons for the sanction set forth. The second reason for the sanction clearly finds that its purpose is not to punish the Respondent, but to protect the public. Respondent admits that he may not feel competent conducting evaluations of young children and will not engage in any further child custody evaluations. It is clear from this information that Respondent was not competent to conduct a proper child custody evaluation of a young child by way of

training or experience. The result of this situation resulted in a very inadequate evaluation being submitted by a licensed psychologist.

4. Respondent asserts that the State did not pursue the first charge.
 - a. The disposition of the first charge is irrelevant and may not be raised in establishing guilt or determining sanctions.
 - b. The Board's Final Order, dated October 21, 2003, does not mention the first charge at all in its Findings of Fact. Thus, the disposition of the first case does not affect the Board's Conclusions of Law.
5. The Board's decision to prosecute the instant case against Respondent is within its discretion and did not constitute a patent abuse of discretion.
 - a. An agency has inherent prosecutorial discretion in making its decision whether to prosecute a case. An agency's decision not to take enforcement action is presumed unreviewable. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, the standard of review for selective enforcement challenges to agency decisions is patent abuse of discretion. *FTC v. Universal-Rundle Corp.*, 387 U.S. 244, 250 (1967).
 - b. The Board's decision to refuse to withhold enforcement is peculiarly within its expert understanding. *Id.* at 251. The decision must be based upon a reasonable evaluation of the merits of Respondent's case. *Id.*
 - c. The disposition of prior cases involving child custody evaluations was based on the facts and circumstances of prior cases, and is not relevant to this proceeding, in which Respondent has clearly violated the standard of care. Furthermore, if the Board was estopped from prosecuting cases simply because all such violations have not been enforced, it would be prevented from accomplishing its purpose of protecting the public.
 - d. Therefore, the Board's Order does not constitute a patent abuse of discretion and should be upheld.
6. The Board acted within its discretion in imposing sanctions.
 - a. S.C. Code Ann. § 40-55-150 (A) provides that the Board may, *inter alia*, restrict the license or reprimand a licensee upon a finding of misconduct as defined in that Section.
 - b. The Board found that Respondent had violated S.C. Code § 40-55-150(A)(8) and S.C. Code Regs. 100-4(C)(6). The fact that other custody matters which

did not involve breaches of the standard of care have received letters of concern is of no significance. Respondent has not shown that his deficiencies were similar to others who received a different result. In making this argument, Respondent has to first concede that he engaged in a violation of his professional standards. The Board is entitled to and must, judge each case on its own merits. To render the same sanction for all cases of a specific type would imply that sanctions were not rehabilitative, or designed to protect the public. "Cookie-cutter" sanctions, which ignore the facts of the case, are more likely to be determined to be punitive. What Respondent has challenged in his motion is the discretion of this Board to issue a Formal Accusation. He asserts that the Board should have not issued formal charges. This is not proper. Respondent must compare his case against other cases which resulted in formal action. The decision to issue a formal accusation is not subject to challenge.

- c. While the misconduct occurred within the context of a custody evaluation, Respondent's conduct, which involved rendering a formal professional opinion without gathering sufficient information upon which to base his opinions, could have occurred in any context within Respondent's practice of psychology.
- d. Therefore, the Board acted within its authority in issuing a public reprimand and imposing probation for a six (6) month period.

For the foregoing reasons, Petitioner respectfully requests that this Court deny Respondent's motion for reconsideration.

Respectfully submitted,

BY: 

PATRICK D. HANKS
Assistant General Counsel
South Carolina Department of Labor,
Licensing and Regulation
P.O. Box 11329
Columbia, S.C. 29211-1329
(803) 896-4470

Columbia, South Carolina
January 20, 2004.

**BEFORE THE SOUTH CAROLINA STATE BOARD OF PSYCHOLOGY
EXAMINERS**

In the Matter of:

ANDREW B. McGARITY, Ph.D.

License #695,

Respondent.

**ORDER ON MOTION AND PETITION
FOR RECONSIDERATION AND STAY
OF ENFORCEMENT OF FINAL ORDER**

By Final Order dated October 21, 2003, the South Carolina State Board of Psychology Examiners (the Board) found that the State proved by a preponderance of the evidence that the Respondent had violated the Board's Practice Act. In its Final Order, the Board made specific findings of fact, conclusions of law and its determination of the appropriate sanction given the circumstances of the case. On or about November 24, 2003, the Respondent filed a Motion and Petition to Reconsider the Final Order. The Respondent's Motion sought to have the Final Order altered and amended in several particulars, including: (1) Determining that the first accusation is dismissed with prejudice; (2) the issuance of an unpublished final order written; or (3) the withdrawal of the Final Order and the issuance of a letter of caution or letter of warning, at most, in its stead; or (4) a suspension of the Final Order, unpublished, conditioned upon the Respondent not conducting any other custody evaluations. The State filed a Return to the Respondent's Motion and Petition on or about January 28, 2004.

The Board met on January 30, 2004 at which time it took under consideration the Respondent's Motion and Petition along with the State's Return. Each of the grounds stated in the Motion and Petition were taken into consideration by the Board during its deliberation of the merits of the Motion. The Respondent's first stated ground is that the first charge in the Complaint was not prosecuted by the State, and the failure of the Board to specifically make such a determination in the Final Order. In his Motion, the Respondent stated that the record shows that the State was not prosecuting the first charge, and no evidence was presented on the allegations. Given the State's failure to prosecute the charge, and that no evidence was presented, the Board declined to address the charge in the Final Order; but addressed only the charges and evidence that were before it for consideration. However, if the Respondent seeks a formal dismissal of the first charge, the Board finds that the first charge as set forth in Subsection II, Paragraph #1 of the Formal Accusation should be dismissed. The Board declines to dismiss the charge with prejudice, finding that the Respondent has failed to state a sufficient reason for such a dismissal.

With respect to the second ground stated in the Motion and Petition, that being that the Board's decision in this case is inconsistent with the history of its disciplinary actions, the Board

finds that the argument is without merit. Each disciplinary case is considered on an individual basis taking into consideration the facts involved in the particular case. The Respondent's case was judged independent of all prior cases, with the Board concluding after the presentation of all the evidence by both sides, that the Respondent had violated the Act governing the practice of psychology in this State. After careful consideration of findings of fact and legal conclusions, the Board came up with what it deemed an appropriate sanction given the nature of the violation. The Board is not now persuaded that the sanction imposed is unduly harsh or that the sanction is not warranted in this case. Additionally, the Board's Practice Act provides that once a violation is found, the Board may impose a sanction that ranges from a reprimand to revocation of a license. In light of the evidence against the Respondent, the Board finds that the sanction imposed is within the Board's authority and is appropriate in addressing the violation in a manner that will not punish the Respondent, but that will protect the public from professional ineptitude. For the reasons stated herein, the Board finds that the Respondent's motion for the issuance of an unpublished final order; or the issuance of a letter of caution or letter of warning; or the suspension of the Final Order, unpublished, conditioned upon the Respondent not conducting any other custody evaluations, should be denied.

Further, at the same time the Respondent filed his Motion and Petition to Reconsider, he also filed a Motion and Petition For A Stay of the Application and Enforcement of the Final Order. The Board took this Motion under consideration at its meeting on January 30, 2004, and after a careful review of the Motion, the Board finds that the Motion should be granted. However, the Board's decision to grant the Motion on a limited basis is not in response to the arguments put forth by the Respondent in the Motion itself, since most of the arguments were addressed during the evidentiary hearing or in the Final Order. The decision to grant the Motion is based solely on the Board's desire not to prejudice the Respondent should he desire to seek appellant review of the Final Order. Therefore, enforcement of the Final Order will be stayed for a period of thirty (30) days beginning on the date this order on the motion is served upon the Respondent or his legal counsel. At the expiration of the 30 days, the Final Order will become enforceable as written.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that, the first charge as set forth in Subsection II, Paragraph #1 of the Formal Accusation shall be, and hereby is, **dismissed**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Respondent's Motion and Petition for the issuance of an unpublished final order, or withdrawal of the final order and the issuance of a letter of caution or letter of warning, or a suspension of the final order, unpublished, conditioned upon the Respondent not conducting any other custody evaluations, shall be, and hereby is, **denied**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that enforcement of the Final Order shall be stayed for a period of thirty (30) days beginning on the date this order is served upon the Respondent or Respondent's counsel. At the expiration of 30 days, the Final Order shall become enforceable as written.


AND IT IS SO ORDERED.

STATE BOARD OF PSYCHOLOGY EXAMINERS

BY:



ANDREW H. RYAN, JR., Ph.D.
Chairman of the Board


~~February~~ March 5, 2004.

COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7

PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505

SECTION 11507.5: Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

SECTION 11507.6: Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after such service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it claimed that the act or omission of the respondent as to such person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omission or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that such reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of such oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

(g) In any proceeding under subdivision (i) or (j) of Section 12940, or Section 19572 or 19702, alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is not discoverable unless it is to be offered at a hearing to attack the credibility of the complainant as provided for under subdivision (j) of Section 11513. This subdivision is intended only to limit the scope of discovery; it is not intended to affect the methods of discovery allowed under this section.

SECTION 11507.7. Petition to compel discovery; Order; Sanctions

(a) Any party claiming his request for discovery pursuant to Section 11507.6 has not been complied with may serve and file a verified petition to compel discovery in the superior court for the county in which the administrative hearing will be held, naming as respondent the party refusing or failing to comply with Section 11507.6. The petition shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why such matter is discoverable under this section, and the ground or grounds of respondent's refusal so far as known to petitioner.

(b) The petition shall be served upon respondent party and filed within 15 days after the respondent party first evidenced his failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed with 15 days of the date set for commencement of the administrative hearing except upon order of the court after motion and notice and for good cause shown. In acting upon such motion, the court shall consider the necessity and reasons for such discovery, the diligence or lack of diligence of the moving party, whether the granting of the motion will delay the commencement of the administrative hearing on the date set, and the possible prejudice of such action to any party.

(c) If from a reading of the petition the court is satisfied that the petition sets forth good cause for relief, the court shall issue an order to show cause directed to the respondent party; otherwise, the court shall enter an order denying the petition. The order to show cause shall be served upon the respondent and his attorney of record in the administrative proceeding by personal delivery or certified mail and shall be returnable no earlier than 10 days from its issuance nor later than 30 days after the filing of the petition. The respondent party shall have the right to serve and file a written answer or other response to the petition and order to show cause.

(d) The court may in its discretion order the administrative proceeding stayed during the pendency of the proceeding, and if necessary for a reasonable time thereafter to afford the parties time to comply with the court order.

(e) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that such matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under such provisions, the court may order lodged with it such matters as are provided in subdivision (b) of Section 915 of the Evidence Code and examine such matters in accordance with the provisions thereof.

(f) The court shall decide the case on the matters examined by the court in camera, the papers filed by the parties, and such oral argument and additional evidence as the court may allow.

(g) Unless otherwise stipulated by the parties, the court shall no later than 30 days after the filing of the petition file its order denying or granting the petition, provided, however, the court may on its own motion for good cause extend such time an additional 30 days. The order of the court shall be in writing setting forth the matters or parts thereof the petitioner is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the clerk upon the parties. Where the order grants the petition in whole or in part, such order shall not become effective until 10 days after the date the order is served by the clerk. Where the order denies relief to the petitioning party, the order shall be effective on the date it is served by the clerk.

(h) The order of the superior court shall be final and not subject to review by appeal. A party aggrieved by such order, or any part thereof, may within 15 days after the service of the superior court's order serve and file in the district court of appeal for the district in which the superior court is located, a petition for a writ of mandamus to compel the superior court to set aside or otherwise modify its order. Where such review is sought from an order granting discovery, the order of the trial court and the administrative proceeding shall be stayed upon the filing of the petition for writ of mandamus, provided, however, the court of appeal may dissolve or modify the stay thereafter if it is in the public interest to do so. Where such review is sought from a denial of discovery, neither the trial court's order nor the administrative proceeding shall be stayed by the court of appeal except upon a clear showing of probable error.

(i) Where the superior court finds that a party or his attorney, without substantial justification, failed or refused to comply with Section 11507.6, or, without substantial justification, filed a petition to compel discovery pursuant to this section, or, without substantial justification, failed to comply with any order of court made pursuant to this section, the court may award court costs and reasonable attorney fees to the opposing party. Nothing in this subdivision shall limit the power of the superior court to compel obedience to its orders by contempt proceedings.

BEFORE THE
BOARD OF PSYCHOLOGY
STATE OF CALIFORNIA

In the Matter of the Accusation

Against:

Andrew B. McGarity, Ph.D.

Respondent.

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No. W289

STATEMENT TO RESPONDENT

TO THE RESPONDENT ABOVE - NAMED:

There is attached hereto a copy of the Statement of Issues which has been filed with the office of the State agency named herein and which is hereby served upon you.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the agency named herein within fifteen (15) days after a copy of the Accusation was personally served on you or mailed to you, you will be deemed to have waived your right to a hearing in this matter and the agency may proceed upon the Accusation without a hearing and may take action thereon as provided by law.

The request for a hearing may be made by delivering or mailing one of the enclosed forms entitled "Notice of Defense" or by delivering or mailing a notice of Defense as provided in Section 11506 of the Government Code to the Deputy Attorney General in this case, whose name, address and telephone number appear on the front page of the Accusation.

The hearing may be postponed for a good cause. If you have good cause, you are obliged to notify the agency within 10 working days after you discover the good cause. Failure to notify the agency within 10 days will deprive you of a postponement.

You may, but need not, be represented by counsel at any or all stages of these proceedings. The enclosed Notice of Defense, if signed and filed with the above - designated agency shall be deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any objection to the form of the Accusation unless you file a further Notice of Defense as provided in Section 11506 of the Government Code within fifteen (15) Days after service of the Accusation upon you.

If you file any Notice of Defense within the time permitted, a hearing will be had upon the charges made in the Accusation.

Copies of Section 11507.5, 11507.6 and 11507.7 of the Government Code are attached.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.6 of the Government Code in possession, custody or control of the agency, you may contact the Deputy Attorney General, whose name, address, and telephone number appear on the first page of the Accusation.

STIPULATED SETTLEMENTS

Very often, administrative cases are settled by the parties through discussions and negotiations. Our procedures do not include a formal settlement conference, which is a common procedure in civil court cases. However, all parties in this case should get together at the earliest time to discuss any possible stipulations or settlement that can be mutually agreed upon.

BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

| | | |
|---------------------------------|---|-----------------------------------|
| In the Matter of the Accusation |) | |
| Against: |) | |
| |) | No. W289 |
| Andrew B. McGarity, Ph.D. |) | |
| License No. PSY 7509 |) | <u>NOTICE OF DEFENSE</u> |
| |) | (Gov. Code Sections 11505& 11506) |
| |) | |
| Respondent. |) | |
| _____ |) | |

I, the undersigned, the respondent named in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation, Statement to Respondent, Government Code sections 11507.5, 11507.6 and 11507.7, and two copies of a Notice of Defense.

I hereby request a hearing in said proceeding to permit me to present my defense to the charges contained in said Accusation.

DATED: _____

Respondent's Signature _____

Respondent's Mailing Address _____

Telephone No. () _____

Check off appropriate statement

_____ I am represented by counsel whose name, address, and telephone number are shown below.

_____ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address, and telephone number will be filed with you so that counsel will be on record to receive legal notices, pleadings, and other papers.

1 BILL LOCKYER, Attorney General
of the State of California
2 JANE ZACK SIMON, State Bar No. 116564
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, California 94102
Telephone: (415) 703-5544
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7
8
9 **BEFORE THE**
BOARD OF PSYCHOLOGY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **ANDREW B. McGARITY, Ph.D.**
13 1269 Hoytwell Church Road
14 Blackstock, SC 29014

15 License No. PSY 7509

16
17 Respondent.

Case No. W289

REQUEST FOR DISCOVERY

[Gov. Code § 11507.6]

18
19
20 TO RESPONDENT:

21 Under section 11507.6 of the Government Code of the State of California, parties
22 to an administrative hearing, including the Complainant, are entitled to certain information
23 concerning the opposing party's case. A copy of the provisions of section 11507.6 of the
24 Government Code concerning such rights is included among the papers served.

25 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU
26 ARE HEREBY REQUESTED TO:

27 1. Provide the names and addresses of witnesses to the extent known to the
28 Respondent, including, but not limited to, those intended to be called to testify at the hearing, and

1 2. Provide an opportunity for the Complainant to inspect and make a copy of any of
2 the following in the possession or custody or under control of the Respondent:

3 a. A statement of a person, other than the Respondent, named in the initial
4 administrative pleading, or in any additional pleading, when it is claimed that the act or
5 omission of the Respondent as to this person is the basis for the administrative
6 proceeding;

7 b. A statement pertaining to the subject matter of the proceeding made by any
8 party to another party or persons;

9 c. Statements of witnesses then proposed to be called by the Respondent and
10 of other persons having personal knowledge of the acts, omissions or events which are the
11 basis for the proceeding, not included in (a) or (b) above;

12 d. All writings, including but not limited to reports of mental, physical and
13 blood examinations and things which the Respondent now proposes to offer in evidence;

14 e. Any other writing or thing which is relevant and which would be
15 admissible in evidence, including but not limited to, any patient or hospital records
16 pertaining to the persons named in the pleading;

17 f. Investigative reports made by or on behalf of the Respondent pertaining to
18 the subject matter of the proceeding, to the extent that these reports (1) contain the names
19 and addresses of witnesses or of persons having personal knowledge of the acts,
20 omissions or events which are the basis for the proceeding, or (2) reflect matters
21 perceived by the investigator in the course of his or her investigation, or (3) contain or
22 include by attachment any statement or writing described in (a) to (e), inclusive, or
23 summary thereof.

24 For the purpose of this Request for Discovery, "statements" include written
25 statements by the person, signed, or otherwise authenticated by him or her, stenographic,
26 mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person,
27 and written reports or summaries of these oral statements.

28 //

1 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for
2 Discovery should be deemed to authorize the inspection or copying of any writing or thing which
3 is privileged from disclosure by law or otherwise made confidential or protected as attorney's
4 work product.

5 Your response to this Request for Discovery should be directed to the undersigned
6 attorney for the Complainant at the address on the first page of this Request **within 30 days after**
7 **service of the Accusation.**

8 Failure without substantial justification to comply with this Request for Discovery
9 may subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30
10 of the Government Code.

11 DATED: May 3, 2005

12 BILL LOCKYER, Attorney General
13 of the State of California

14 
15 JANE ZACK SIMON
16 Deputy Attorney General

17 Attorneys for Complainant

18 JZS:csc
19
20
21
22
23
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27
28

DECLARATION OF SERVICE BY CERTIFIED MAIL

In the Matter of the Accusation
Against:

Andrew B. McGarity, Ph.D.

No. : W289

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 1422 Howe Avenue, Ste. 22, Sacramento, California 95825. I served a true copy of the attached:

STATEMENT TO RESPONDENT; ACCUSATION; GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7; NOTICE OF DEFENSE (2 COPIES); REQUEST FOR DISCOVERY AND DISCIPLINARY GUIDELINES

by mail on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

NAME AND ADDRESS

CERT NO.

Andrew B. McGarity, Ph.D.
1269 Hopewell Church Road
Blackstock, SC 29014

7002 0860 0004 1219 6408

Jane Zack Simon
Deputy Attorney General
Office of the Attorney General
455 Golden Gate Avenue, Ste. 11000
San Francisco, CA 94102

Each said envelope was then, on May 11, 2005, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, as certified mail, with the postage thereon fully prepaid, and return receipt requested.

Executed on, May 11, 2005, at Sacramento, California.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



DECLARANT

Kathi Burns

Enforcement Coordinator

| SENDER: COMPLETE THIS SECTION | COMPLETE THIS SECTION ON DELIVERY |
|--|--|
| <ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. | <p>A. Signature <i>Andrew B. McGarity</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Andrew B. McGarity</i> C. Date of Delivery <i>5-19-05</i></p> |
| <p>1. Article Addressed to:</p> | <p>Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> |
| <p>Andrew B. McGarity, Ph.D. 1269 Hopewell Church Road Blackstock, SC 29014</p> | <p>Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>enter delivery address below:</p> <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> |

RECEIVED
MAY 23 2005
BOARD OF PSYCHOLOGY

7002 0860 0004 1219 6408

BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Andrew B. McGarity, Ph.D.
License No. PSY 7509

Respondent.

No. W289

NOTICE OF DEFENSE

(Gov. Code Sections 11505 & 11506)

I, the undersigned, the respondent named in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation, Statement to Respondent, Government Code sections 11507.5, 11507.6 and 11507.7, and two copies of a Notice of Defense.

~~DO NOT~~
I hereby request a hearing in said proceeding to permit me to present my defense to the charges contained in said Accusation.

DATED: 5-25-05

Respondent's Signature

Respondent's Mailing Address



Andrew B. McGarity
RR 1
1269 Hopewell Church Rd.
Blackstock, SC 29014

Telephone No. () 803 581 2284

Check off appropriate statement

~~I am represented by counsel whose name, address, and telephone number are shown below.~~

- OFFERED FOR CONSIDERATION -

MY CALIFORNIA LICENSE IS IN AN "INACTIVE" STATUS. I HAVE NOT PRACTICED IN CA. FOR THE PAST 10 YEARS, I HAVE NO PLANS TO EVER PRACTICE AGAIN AND UNDERSTAND THAT MY LICENSE WILL EXPIRE IN 2006. I WILL NOT RENEW AS I AM RETIRED. I MAINTAIN THAT THE CUSTODY EVAL PERFORMED IN 1999 IN SC WAS ^(AS OF 9/04) DONE PROPERLY.

I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address, and telephone number will be filed with you so that counsel will be on record to receive legal notices, pleadings, and other papers.

Exhibit 3

1 BILL LOCKYER, Attorney General
of the State of California
2 JANE ZACK SIMON, State Bar No. 116564
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5544
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7 **BEFORE THE**
8 **BOARD OF PSYCHOLOGY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **ANDREW B. McGARITY, Ph.D.**
1269 Howewell Church Road
Blackstock, SC 29014

13 License No. PSY 7509

14 Respondent.

Case No. **W289**

NOTICE OF HEARING
[Gov. Code § 11509]

Hearing: October 6, 2005

16
17 YOU ARE HEREBY NOTIFIED that a hearing in this matter will commence on
18 **Thursday, October 6, 2005 at 9 :30 a.m.** before an Administrative Law Judge at

19
20 **Office of Administrative Hearings**
1515 Clay Street, Suite 206
21 **Oakland, California 94612.**

22
23 The hearing will be conducted before the BOARD OF PSYCHOLOGY by an
24 Administrative Law Judge of the Office of Administrative Hearings, upon the charges made in
25 Accusation No. W289 served upon you.

26 If you object to the place of hearing, you must notify the presiding officer within
27 ten (10) days after this notice is served on you. Failure to notify the presiding officer within ten
28 (10) days will deprive you of a change in the place of hearing.

1 You may be present at the hearing. You have the right to be represented by an
2 attorney at your own expense. You are not entitled to the appointment of an attorney to represent
3 you at public expense. You are entitled to represent yourself without legal counsel. You may
4 present any relevant evidence, and will be given full opportunity to cross-examine all witnesses
5 testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of
6 witnesses and the production of books, documents, or other things by applying to the Office of
7 Administrative Hearings, 1515 Clay Street, Suite 206, Oakland, California 94612; telephone:
8 (510) 622-2722.

9 INTERPRETER: Pursuant to section 11435.20 of the Government Code, the
10 hearing shall be conducted in the English language. If a party or a party's witness does not
11 proficiently speak or understand the English language and before commencement of the hearing
12 requests language assistance, an agency subject to the language assistance requirement in section
13 11435.15 of the Government Code shall provide a certified interpreter or an interpreter approved
14 by the administrative law judge conducting the proceedings. The cost of providing the
15 interpreter shall be paid by the agency having jurisdiction over the matter if the administrative
16 law judge or hearing officer so directs, otherwise by the party for whom the interpreter is
17 provided. If you or a witness require the assistance of an interpreter, ample advance notice of
18 this fact should be given to the Office of Administrative Hearings so that appropriate
19 arrangements can be made.

20 CONTINUANCES: Under section 11524 of the Government Code, the agency
21 may grant a continuance, but when an administrative law judge of the Office of Administrative
22 Hearings has been assigned to the hearing, no continuance may be granted except by him or her
23 or by the presiding Administrative Law Judge for good cause. When seeking a continuance, a
24 party shall apply for the continuance within ten (10) working days following the time the party
25 discovered or reasonably should have discovered the event or occurrence which establishes good
26 cause for the continuance. A continuance may be granted for good cause after the ten (10)
27 working days have lapsed only if the party seeking the continuance is not responsible for and has
28 made a good faith effort to prevent the condition or event establishing the good cause.

Continuances are not favored. If you need a continuance, immediately write or call the Office of Administrative Hearings, 1515 Clay Street, Suite 206, Oakland, California 94612; telephone: (510) 622-2722.

DATED: July 6, 2005

BILL LOCKYER, Attorney General
of the State of California


JANE ZACK SIMON
Deputy Attorney General

Attorneys for Complainant

***JZS

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL

(Separate Mailings)

In the Matter of the Accusation Against: ANDREW B. McGARITY, Ph.D.

Case No. W289

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 8, 2005, I served the attached

NOTICE OF HEARING by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested and another true copy of the **NOTICE OF HEARING** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, addressed as follows:

ANDREW B. McGARITY, Ph.D.
RR1
1269 Hopewell Church Road
Blackstock, SC 29014

Certified Mail No.

Certified Article Number

7160 3901 9848 5186 8761

SENDERS RECORD


I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 8, 2005, at San Francisco, California.

Carmen Choy

Typed Name

Carmen Choy

Signature

| | | | |
|---|--|---|--|
| 2. Article Number | | COMPLETE THIS SECTION ON DELIVERY | |
|  7160 3901 9848 5186 8761 | | A. Received by (Please Print Clearly) | B. Date of Delivery |
| | | <i>Andrew B. McGarity</i> <i>8-11-05</i> | |
| | | C. Signature | <input type="checkbox"/> Agent <input type="checkbox"/> Addressee |
| | | <i>Andrew B. McGarity</i> | |
| 3. Service Type CERTIFIED MAIL | | D. Is delivery address different from item 1? | |
| 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes | | <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| 1. Article Addressed to: | | | |
| ANDREW B. McGARITY, Ph.D. RR1 1269 Hopewell Church Road Blackstock, SC 29014 SF2005200005 | | Jane Zack Simon | |
| PS Form 3811, July 2001 | | Domestic Return Receipt | |

7160 3901 9848 5186 8761

TO: ANDREW B. McGARITY, Ph.D.
 RR1
 1269 Hopewell Church Road
 Blackstock, SC 29014

SENDER: Jane Zack Simon

REFERENCE: SF2005200005

| | |
|--|----------------------|
| PS Form 3800, June 2000 | |
| RETURN RECEIPT SERVICE | Postage |
| | Certified Fee |
| | Return Receipt Fee |
| | Restricted Delivery |
| | Total Postage & Fees |
| US Postal Service Receipt for Certified Mail No Insurance Coverage Provided Do Not Use for International Mail | |
| POSTMARK OR DATE | |

Exhibit 4

**BOARD OF PSYCHOLOGY**

1422 HOWE AVENUE, SUITE 22
SACRAMENTO, CA 95825-3200
(916) 263-2699
www.psychboard.ca.gov



STATE OF CALIFORNIA
BOARD OF PSYCHOLOGY

I, THOMAS O'CONNOR, Executive Officer and official custodian of the records of the Board of Psychology, do hereby certify that ANDREW B. MCGARITY, Ph.D. was issued psychologist's license No. PSY 7509 by the Board on August 2, 1982, and said license is valid, but became INACTIVE on August 24, 1998. Said license will expire unless renewed on July 31, 2006. The address of record for said licensee is 1269 Hopewell Church Road, Blackstock, SC 29014.

I further certify that there has been no current or prior disciplinary action taken by the Board against the above license.

DATED: April 14, 2005

Respectfully submitted

A handwritten signature in cursive script that reads 'Thomas O'Connor'.

THOMAS O'CONNOR
Executive Officer

/kjb



Exhibit 5

1 JILL LOCKYER, Attorney General
of the State of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 JANE ZACK SIMON, State Bar No. 116564
Deputy Attorney General
4 California Department of Justice
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5544
6 Facsimile: (415) 703-5480

7 Attorneys for Complainant

8 **BEFORE THE**
BOARD OF PSYCHOLOGY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. W289

12 **ANDREW B. McGARITY, Ph.D.**

CERTIFICATION OF COSTS:
DECLARATION OF
JANE ZACK SIMON

13 Psychology License No. PSY 7509

[Bus. & Prof. Code §125.3]

14 Respondent.
15
16

17 I, JANE ZACK SIMON, hereby declare and certify as follows:

18 1. I am a Deputy Attorney General employed by the California Department of
19 Justice (DOJ), Office of the Attorney General (Office). I am assigned to the Health Quality
20 Enforcement Section in the Civil Division of the Office. I have been designated as the
21 representative to certify the costs of prosecution by DOJ and incurred by the Board of
22 Psychology in this case. I make this certification in my official capacity and as an officer of the
23 court.

24 2. I represent the Complainant, Jeffrey Thomas, Interim Executive Director
25 of the Board of Psychology (the "Board"), in this action. I was assigned to handle this case on or
26 around April 25, 2005.

27 ///
28

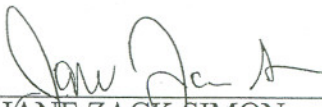
3. As the Deputy Attorney General assigned to handle this case, I performed a wide variety of tasks that were necessary for the prosecution of this matter, including, but not limited to (1) conducting an initial case evaluation; (2) obtaining, reading and reviewing the investigative material and requesting further investigation, as needed; (3) drafting pleadings, correspondence, memoranda, and other case-related documents; (4) consulting and/or meeting with colleague deputies, supervisory staff, and client staff; (5) reviewing material received from respondent; (6) attempting to settle the matter; and (7) preparing for hearing.

4. I am personally familiar with the time recording and billing practices of DOJ and the procedure for charging the client agency for the reasonable and necessary work performed on a particular case. Whenever work is performed on a case, it is the duty of the employee to keep track of the time spent and to report that time on DOJ time sheets at or near the time of the tasks performed. Based upon the time reported through October 4, 2005, DOJ has billed or will bill the Board for the following amount of time spent working on the above entitled case.

| <u>Employee/ Position</u> | <u>Fiscal Year</u> | <u>No. of Hours</u> | <u>Hourly Rate</u> | <u>Total Charges</u> |
|--|------------------------|-------------------------|------------------------|--------------------------|
| Jane Zack Simon Deputy Attorney General | 2004-2005 | 1.50 | \$139.00 | \$208.50 |
| | 2005-2006 | 3.25 | \$146.00 | \$474.50 |
| | | | | TOTAL: \$683.00 |

5. To the best of my knowledge the items of cost set forth in this certification are correct and were necessarily incurred in this case.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 5, 2005, in the City of San Francisco, California.



JANE ZACK SIMON
Deputy Attorney General